Marathon Service Sales, Inc., Fleet Service, Inc., Employer-Petitioner and Laundry and Linen Drivers, Local 285, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 7-UC-225

June 25, 1982

DECISION ON REVIEW AND ORDER

By Members Fanning, Jenkins, and Zimmerman

On September 23, 1981, the Regional Director for Region 7 issued a Decision and Order in the above-captioned proceeding in which he dismissed the Employer's petition seeking to exclude the garage employees from the collective-bargaining unit. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review alleging, inter alia, that the Regional Director, in finding that the garage employees and the driver-salesmen are represented in a single unit, made erroneous factual findings.

On November 9, 1981, the Board by telegraphic order granted the Employer's request for review with respect to the inclusion of garage employees in the driver-salesmen unit. Thereafter, the Employer filed a brief on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issue under review, including the brief of the Employer, and makes the following findings:

The Employer, organized as several affiliated corporations, operates a linen rental and textile maintenance service. Marathon Service Sales, Inc., delivers and picks up the linens and its driver-salesmen (hereafter also referred to as drivers) have been represented by the Union for many years. Marathon Linen Service, Inc., launders and processes the linens and its production and maintenance employees as well as its clericals are represented by another labor organization not a party to this proceeding. Fleet Service, Inc., which is located in a garage facility several blocks away from the Employer's plant, services the Employer's trucks. Fleet Service, Inc.'s garage employees (also referred to herein as mechanics) are at issue in this proceeding.

Beginning in the mid-1960's, the Employer's truck service operation was run by Larry Kaiser, with the occasional help of another mechanic. Nei-

ther of them was represented by the Union or any other labor organization. In the early or mid-1970's, Tony Kuzmitz followed Kaiser as the garage mechanic.

In 1979, Kuzmitz asked William Genematas, president of both Marathon Service Sales, Inc., and Fleet Service, Inc., whether he could be in the Union in order to take advantage of prior service as a union member for pension purposes. Following this request from Kuzmitz, the Employer negotiated the matter with the Union. In these negotiations, the Union insisted that if a contract was signed it would cover not only Kuzmitz but also all garage functions so that, if any other mechanics were hired, they would also be covered. Genematas, in turn, insisted that the garage unit be kept separate from the drivers' unit. According to Genematas, the Union replied, "I think we can work that out. We have a supplemental agreement, or some agreement, that we'll use."1

Thereafter, a supplemental agreement was executed by the parties in October 1979, and ran retroactively from June 1, 1978, to June 1, 1981.² The agreement provided that as the Employer and the Union were already parties to a collective-bargaining agreement covering drivers, effective from March 24, 1977, to March 28, 1980, and that, as they had agreed to include employees engaged in the repair and maintenance of the Employer's vehicles, the current driver agreement was therefore to be amended to include a "repair and maintenance-motor vehicles" classification under article XXV of that contract.³

When the 1977-80 driver contract expired, a new agreement was executed by the parties which by its terms runs from March 29, 1980, to March 26, 1983. The recognition clause of this contract (art. 1, "Union Security," sec. 1) provides that the Employer recognizes the Union as the representative "of those classifications of employees covered by this agreement and listed in Article XXV." The classifications listed in article XXV of the 1980-83 agreement all apply to driver-salesmen. Further, article 1, section 6, "Jurisdiction," provides that the Employer will not direct "other than employees in this bargaining unit." (Emphasis supplied.) And article 1, section 7, provides that, if no employee in

¹ The Union did not call any witnesses.

² Kuzmitz died in 1980, and the Employer hired Alfred Beseler for the mechanic's position in early 1981. Although Beseler was initially salaried, he soon was switched to an hourly rate, as provided in the supplemental agreement, as well as accorded all contractual benefits including the Employer's contributions to the health and welfare and pension funds. At the time of the hearing, Beseler continued to receive contract wages and benefits.

³ President Genematas testified that he delegated a vice president to sign the supplemental agreement, and that he did not see the agreement until a few days before the hearing herein.

"the bargaining unit" (emphasis supplied) is available to make a delivery, supervisors may make that delivery.

When the supplemental agreement expired on June 1, 1981, the Employer refused to sign another agreement with respect to the garage operations contending that the drivers and garage employees constitute separate bargaining units. The Employer then filed the instant unit clarification petition to exclude the garage employees from the existing unit of drivers.

In dismissing the petition, the Regional Director found that the contract covering drivers and the supplemental agreement covering garage employees expired on the same date, March 28, 1981, and that, by virtue of the execution of the supplemental agreement covering garage employees, the Union became the bargaining agent of a single unit consisting of drivers and garage employees. Contrary to the Regional Director, we find that the supplemental agreement is ambiguous regarding the unit question, and that the record as a whole does not support the conclusion that the parties intended to create a single unit consisting of drivers and garage employees.

The 1977-80 contract between the parties covered a single unit of drivers only. The supplemental agreement incorporated garage employees into that contract by amending article XXV to include garage classifications. By so amending the then existing driver contract, the supplemental agreement appears to have created a single unit of drivers and mechanics. However, the supplemental agreement also contained an expiration date some 15 months subsequent to the expiration of the 1977-80 contract. Logically, we cannot understand how an agreement covering a unitary bargaining unit can expire at different times for different classifications. Consequently, as the supplemental agreement is ambiguous regarding the unit issue, we look to the circumstances leading up to the signing of that agreement.⁴ An examination of these circumstances leads us to conclude that the parties did not intend to create a single bargaining unit of drivers and garage employees when they executed the supplemental agreement. The above-recited testimony of the Employer concerning the supplemental agreement's negotiations clearly indicates that the Employer believed that the parties agreed that the contract would contain separate units. Thus, Genematas testified that he insisted during negotiations that garage employees must be a unit separate from the drivers' unit, and that the Union responded to his insistence with the assurance that something could be worked out. Moreover, the conduct of the parties subsequent to the execution of the supplemental agreement supports the position that the parties intended to create separate units of drivers and garage employees. Thus, only a few months after the signing of the supplemental agreement, the parties executed the current 1980-83 drivers' contract covering a single unit of drivers, which does not contain a mechanic's classification nor does it contain any reference to the supplemental agreement.

We find, therefore, based on the record as a whole, including the Employer's testimony and the parties' execution of the 1980-83 contract covering a unit of drivers only, that the parties did not create a single bargaining unit consisting of drivers and garage employees when they executed the supplemental agreement. Accordingly, we shall grant the Employer's petition in this case to exclude the classification of garage employees from the current bargaining unit of drivers.

ORDER

It is hereby ordered that the contractual collective-bargaining unit covering the drivers of Marathon Service Sales, Inc., Detroit, Michigan, represented by Laundry and Linen Drivers, Local 285, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, be, and it hereby is, clarified by excluding therefrom the classification of garage employees.

⁴ Under the parol evidence rule, evidence is inadmissible if offered for the purpose of varying or contradicting the terms of a contract. Corbin, Contracts, § 543 (1960). When a contract's meaning is ambiguous, howev-

er, evidence of surrounding circumstances is admissible to aid interpretation.